

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

February 15, 2002

GSBCA 15703-TRAV

In the Matter of BRIAN T. WALSH

Brian T. Walsh, San Francisco, CA, Claimant.

Paul Cardenas, Regional Financial Officer, Office of the Assistant Secretary for Administration and Management, Department of Labor, San Francisco, CA, appearing for Department of Labor.

DeGRAFF, Board Judge.

Brian T. Walsh is employed by the Department of Labor in San Francisco, California. Mr. Walsh travels frequently enough that his supervisor issued a blanket travel authorization that permits him to travel as often as is necessary to perform his duties. Mr. Walsh's authorized modes of travel include, among others, taxicabs between his residence and common carrier terminals, and commercial car rentals when advantageous to the Government and when approved in writing, in advance. On several occasions, Mr. Walsh took taxicabs from his home to the airport, rented cars to return from the airport to his home, and claimed reimbursement for the costs of the taxicabs and the rental cars on his travel vouchers. Although his supervisor approved Mr. Walsh's vouchers for payment, the regional finance office disallowed parts of Mr. Walsh's claims. Mr. Walsh asks us to review the finance office's decision.

Discussion

Because the travel authorizing official reasonably determined that no suitable common carrier transportation service was available to Mr. Walsh, Labor must reimburse him for the usual fare plus tip for the use of the taxicabs from his home to the airport. Similarly, because the travel authorizing official reasonably decided that Mr. Walsh's use of the rental cars was prudent and advantageous to the Government, and because Mr. Walsh used those cars only for official business, Labor must reimburse him for the rental car fees, plus the cost of gasoline and bridge tolls.

Taxicab Fares

The finance office decided to limit Mr. Walsh's reimbursement for taxicab fares to \$50 plus tip, based upon an agency regulation, Department of Labor Management Series 7 (DLMS-7). DLMS-7-1-2.3c(1) says that a Labor employee will be reimbursed the usual fare plus tip for a trip between a common carrier terminal and the employee's home. DLMS-7-1-2.3c goes on to say:

(2) Reimbursement for the use of taxicabs under paragraph c(1) above is limited to \$50 plus tip unless a greater fare is authorized or approved on the voucher as advantageous to the Government. Taxicabs should not be used when:

(i) Suitable . . . common carrier transportation service . . . is available for all or part of the distance involved . . .

DLMS-7-1-2.3.c(2).

The purpose of DLMS-7 is to supplement the Federal Travel Regulation (FTR). DLMS-7-1-1.1b. The FTR implements statutory requirements and Executive branch policies for travel by federal employees. The FTR provides that when an agency authorizes an employee to use a taxicab, the employee will be reimbursed the usual fare plus tip for a trip between a common carrier terminal and the employee's home. 41 CFR 301-10.420(b)(1) (2001). The FTR also provides that an agency may restrict or place a limit upon the amount it will reimburse an employee for the use of a taxicab when suitable common carrier transportation service, including shuttle service, is available for all of part of the distance involved. 41 CFR 301-10.420(b)(3).

In order to resolve Mr. Walsh's claim for taxicab fares, we must determine whether DLMS-7-1-2.3c(2) is consistent with the FTR. If DLMS-7-1-2.3c(2) imposes a reimbursement limitation on taxicab fares regardless of whether suitable common carrier transportation is available, then the paragraph conflicts with the FTR and is not enforceable because the FTR is a "legislative rule" which trumps an "interpretative rule" such as DLMS-7. Okyon Kim Ybarra, GSBCA 15407-RELO, 01-1 BCA ¶ 31,334; Ronald Anson, GSBCA 15458-TRAV, 00-1 BCA ¶ 31,278; Renea A. Webb, GSBCA 15220-TRAV, 00-1 BCA ¶ 30,889; Judy T. Barnette, GSBCA 14612-RELO, 98-2 BCA ¶ 30,098; Lorrie L. Wood, GSBCA 13705-TRAV, 97-1 BCA ¶ 28,707 (1996). If, however, DLMS-7-1-2.3c(2) imposes a reimbursement limitation only if suitable common carrier transportation service

is available, then the paragraph is consistent with the FTR and can be enforced. The first sentence of DLMS-7-1-2.3c(2) appears to be inconsistent with the FTR because it seems to impose a reimbursement limitation on taxicab fares, without taking into account whether suitable common carrier transportation service is available. In response to Mr. Walsh's claim, however, the finance office quotes from the FTR in support of its position, which suggests that it reads DLMS-7-1-2.3c(2) as being consistent with the FTR's provisions. Although DLMS-7-1-2.3c(2) is inaptly organized, we will give the finance office the benefit of the doubt and conclude that the paragraph is consistent with the FTR.

By applying both the FTR and DLMS-7-1-2.3c(2), we conclude that Labor must reimburse Mr. Walsh the usual fare plus tip for the use of a taxicab from his home to the airport, unless suitable common carrier transportation service was available to Mr. Walsh for those trips.¹ If suitable common carrier transportation service was available, then the finance office can limit Mr. Walsh's reimbursement to \$50 plus tip unless a greater fare was authorized or approved on the voucher as advantageous to the Government. If suitable common carrier transportation service was not available, then the finance office cannot limit Mr. Walsh's reimbursement.

The finance office asserts that Mr. Walsh's reimbursement should be limited to \$50 plus tip because suitable common carrier transportation service was available to him. According to the finance office, there are shuttles that would have taken Mr. Walsh from his home to the airport, and the use of a shuttle would have posed only a slight inconvenience. It also says that shuttles are frequently used by many employees, and that it is a short distance from his home to the airport. One shuttle service quoted the finance office a fare of \$35 to take Mr. Walsh to the airport. Mr. Walsh has made the trip from his home to the airport dozens of times, and the distance is thirty-nine miles each way. He says that employees who live near him have learned from experience to avoid using shuttle service to the airport. Mr. Walsh recalls one trip from his house to the airport by shuttle that involved numerous stops and took so long to arrive at the airport that he missed his scheduled flight. In June 2001, Mr. Walsh contacted a shuttle service to take him to the airport, and learned that the shuttle required him to leave his house three hours before his scheduled flight time. Mr. Walsh's supervisor says that the available shuttle service has proven to be "notoriously time consuming." The \$35 shuttle referred to by the finance office would make three or four stops after picking up Mr. Walsh and before arriving at the airport. There are shuttles that claim to make one stop or no stops at all, and they cost \$65 to \$75.

Whether suitable common carrier transportation service is available to an employee depends upon the circumstances surrounding a particular trip, and is best determined by the official who authorizes the employee's travel. The fact that shuttle service is available and generally less expensive than a taxicab does not always mean that shuttle service is suitable. As Mr. Walsh and his supervisor realize, a time-consuming shuttle ride results in several hours of non-productive time. If an employee travels frequently, as does Mr. Walsh, or if an employee is required to travel at a time when his presence is especially needed in his office, it is easy to imagine how these non-productive hours could have a detrimental effect upon

¹ The finance office does not challenge Mr. Walsh's requests for reimbursement on the basis that he claimed more than the usual fare plus tip.

the work of an office. The official who authorizes an employee's travel is in the best position to evaluate both the type of common carrier transportation service available to an employee and the needs of the office. If, as here, that official reasonably determines that no suitable common carrier transportation service was available to an employee, we will not disagree with that determination. See Nora L. Donohue, GSBCA 15687-TRAV (Feb. 12, 2002).

Because the official who authorized Mr. Walsh's travel reasonably determined that no suitable common carrier transportation service was available to him, the FTR and DLMS-7 do not permit the finance office to limit his reimbursement for taxicab fares from his home to the airport. He should be reimbursed the usual fare plus tip for those trips.

Rental Cars

Mr. Walsh's travel authorization said that he could use commercial car rentals when advantageous to the Government and when approved in writing, in advance.² According to Mr. Walsh and his supervisor, the practice in their office for several years has been for employees to use rental cars to return home from the airport after official travel, because the cost is less than the cost of a taxicab and about the same as a shuttle. Mr. Walsh's supervisor believes that the use of rental cars is prudent and benefits the Government because employees spend less time in pay status. When Mr. Walsh returns from a trip and does not report for work the following day, he returns the rental car to a location relatively near his home. When he returns from a trip and reports for work the following day, he returns the rental car to a location in San Francisco and then takes public transportation to his office. Mr. Walsh's supervisor approves of Mr. Walsh's practice of returning the rental cars to the San Francisco location on the days that he reports for work after returning from travel, because it is less expensive and uses less work time than if Mr. Walsh were to return the cars to some other location and then commute to work.

In May 2001, Mr. Walsh returned from a trip and rented a car to return to his home. The next day, he returned the car to the San Francisco location and then reported for work. The rental car fee was \$48.12, the cost of gasoline was \$9.41, and bridge tolls were \$4.00, for a total cost of \$61.53. Mr. Walsh's supervisor approved his voucher for payment. The finance office decided to reimburse Mr. Walsh for the bridge tolls, but to reimburse him only \$50 for the rental car fee and the gasoline. The finance office paid Mr. Walsh less than he claimed because it concluded that using a rental car was not reasonable and prudent when less expensive shuttles were available. The finance office selected \$50 as the amount to reimburse Mr. Walsh, because it decided that amount was the maximum he could have been reimbursed for a taxicab from the airport to his home.

² Although our file does not contain a copy of an advance written approval for Mr. Walsh to rent a car to take him from the airport to his home when he returned from official travel, Mr. Walsh says that he had his supervisor's approval and his supervisor says that it has been his practice for several years to authorize such rentals. The finance office did not reduce Mr. Walsh's reimbursement due to lack of an advance written approval. We assume, therefore, that Mr. Walsh's use of a rental car was authorized.

In August 2001, Mr. Walsh returned from a trip and again rented a car to return to his home. The next day, he returned the car to the San Francisco location and then reported for work. The rental car fee was \$43.44, the cost of gasoline was \$3.77, and bridge tolls were \$4.00, for a total cost of \$51.21. Again, his supervisor approved his voucher for payment. The finance office decided to reimburse Mr. Walsh \$43.44 for the rental car fee, \$2.00 for one bridge toll, and \$2.00 for gasoline. The finance office deducted \$2.00 for a second bridge toll and approximately one-half the cost of the gasoline because Mr. Walsh returned the car to the San Francisco location. Apparently, the finance office did not believe that returning the car to that location was official business. In addition, the finance office said that it will not reimburse Mr. Walsh anything at all for future rental car charges similar to those he incurred in May and August 2001.

A government traveler is required to exercise the same care in incurring expenses that a prudent person would exercise when traveling for personal business. 41 CFR 301-2.3; DLMS-7-1-1.3a(1). An employee may use a rental car to perform official business when the use of a rental car is authorized as advantageous to the Government. 41 CFR 301-10.1, -10.450; DLMS-7-1-1.2a, -1-3.2a. If an employee is authorized to use a rental car and uses it for anything other than official business, the employee must bear any additional cost that results from the personal use. 41 CFR 301-10.453; DLMS-7-1.3.2f. We examine Mr. Walsh's claim and the finance office's position in light of these principles.

For the same reasons that it is best left to the official who authorizes an employee's travel to determine whether suitable common carrier transportation service is available, it is also best left to that official to determine whether the use of a rental car by an employee is prudent and advantageous to the Government. The authorizing official is in the best position to evaluate the needs of the office and the options available to an employee, and to decide for any given trip whether the use of a rental car is prudent and advantageous to the Government. Mr. Walsh's authorizing official determined that the use of rental cars was prudent and advantageous because, taking all of the circumstances surrounding Mr. Walsh's travel into account, it saved time and money. He is in the best position to evaluate the needs of his office and the options available to Mr. Walsh, and we will not disagree with his reasonable determination.

Mr. Walsh should be reimbursed for the cost of the rental cars, plus gasoline and tolls, because his use of the rental cars was for official business. Mr. Walsh's use of the cars to return from the airport to his home was official business, and returning the cars, whether to the location closer to Mr. Walsh's home or the San Francisco location, was part of the business of renting the cars. There are no facts to show that Mr. Walsh used the cars during the evenings when he returned from travel for any purpose other than to drive to his home. Neither are there any facts to show that he used the cars the following mornings for any purpose other than to drive to a location where he could return the cars to the rental car company. Thus, Mr. Walsh used the rental cars entirely for official business, and he should be reimbursed for the cost of the cars plus the bridge tolls and gasoline. Because his use of the rental cars was authorized and because he did not use the cars for personal business, there

is no basis for refusing to reimburse Mr. Walsh or for limiting the amount of his reimbursement.³

³ If Mr. Walsh's use of the rental cars had been unauthorized or if he had used the rental cars in part for personal business, it is possible that his reimbursement could have been limited to some extent. Phyllis G. Thompson, GSBCA 13691-TRAV, 97-2 BCA ¶ 29,067; Chris B. White, B-261779 (Apr. 12, 1996); Linda K. McClain, B-255936 (Jan. 25, 1995); Ernest D. Ellsworth, B-196196 (Aug. 19, 1980).

Decision

The claims for the taxicab fares and the rental car costs are granted.

MARTHA H. DeGRAFF
Board Judge